UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,691	07/14/2003	Samuel Clayton Muggride	33277/US	3743

7590 08/23/2006

DORSEY & WHITNEY LLP
Intellectual Property Department
Suite 1500
50 South Sixth Steeet
Minneapolis, MN 55402-1498

EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,691	MUGGRIDE ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,3,5-12,15,17,18,20-26 and 36-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,3,5-12, 15,17,18,20-26, and 36-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 2-3, 5-12, 15, 17-18, 20-26, 36-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of prior art in view of Newman and Wallin et al.

Applicant discloses on page 1 of the specification the conventional steps of making frozen fruit filled pie. The process comprises the steps of mixing ingredients to create a pie dough, form the dough into a shell, adding IQF fruit into the shell and applying a top sheet of pie dough over the pie shell. The pie then conveyed through a freezer and to packaging stations. The fruits remain frozen.

The prior art does not disclose adding a suspension comprising ingredients as set forth in the claims over the fruit, maintaining the fruit in frozen state throughout the manufacturing process, transporting in frozen state and the steps for forming the suspension.

Neumann discloses a flavoring suspension which is used in pastries. The suspension comprises 13.6% sugar, 2.3% modified starch, .25% xanthan gum, 45.46% high fructose corn syrup and flavoring. The suspension is made according to steps set forth on col. 7 lines 38-65. Neumann teaches the steps of blending the drying ingredients, metering the liquid sweetener into a kettle and adding the dried ingredients to the liquid sweetener.

Wallin et al disclose a filling suspension. They teach to increase the amount of starch to adjust the viscosity of the suspension. (see col. 5 lines 1-22)

The suspension disclosed by Neumann can be used in pastries; thus, it would have been obvious to one skilled in the art to use the flavoring suspension in pie

because pie is a type of pastry. It would have been obvious to one skilled in the art to use the suspension of Neumann over the fruit in forming the pie to obtain flavoring and to eliminate the steps of adding the dried ingredients as set forth in the prior art method. It would have been obvious to one skilled in the art to mix the dry ingredients with the syrup to form a uniform and homogeneous mixture. The suspension contains liquid, dry sweetnener, minor ingredient , flavors and stabilizers which are the same ingredients that are added to the fruit in the prior art method; thus, its addition to the fruit is not contraindicated. Neumann does not disclose the amount of starch claimed. It would have been obvious to one skilled in the art to increase the amount of starch in the suspension when desiring to increase the viscosity of the suspension. The use of starch to modify the viscosity is known in the art as shown by Wallin et al. It would have been obvious to one skilled in the art to adjust the viscosity profile of the suspension depending upon the texture wanted. For example, if a thick suspension is desired, it would have been obvious to use more starch or to use less if a thin or fluid suspension is wanted. As to maintaining of the IQF fruit in frozen state throughout processing and transporting in frozen state, it would have been obvious to one skilled in the art to so to prevent the fruit from thawing. Thawing of the fruit will give off water which will cause sogginess of the dough crust and thus interfere with the quality of the product. It would have been within the routine experimentation of one skilled in the art to determine the most optimum processing parameters to produce the highest quality product. Baking of the pie would have been readily apparent to one skilled in the art when the product is prepared for consumption. The reduction and increase in viscosity during initial state

and during baking is a natural occurrence due to the presence of the starch. When the suspension of Newmann is used in a pie product, the same thing will occur. When a pie product is frozen, the suspension deposited over the fruit will àlso be frozen. When the pie is heated, the suspension will thaw causing a decrease in viscosity. As the pie is heated, the starch in the suspension will begin to gelatinize causing its viscosity to increase. The suspension of Neumann contains starch.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 21, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1707